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LEAPER FOOTWEAR, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

LEAPER FOOTWEAR, LLC, a Utah limited liability company,	Civil Action No. 2:07-cv-00740 DB
Plaintiff,	**AMENDED COMPLAINT**
v.	**(JURY TRIAL DEMANDED)**
NIKE, INC., an Oregon corporation, AND APPLE, INC., a California corporation,	Honorable Judge Dee Benson
Defendants.	

Dockets.Justia.com

Plaintiff Leaper Footwear, LLC ("Leaper") brings this action against defendants Nike, Inc. ("Nike") and Apple Inc. ("Apple"), and alleges as follows:

THE PARTIES

1. Leaper is a limited liability company organized and existing under the laws of Utah, and having a place of business in this judicial district at 9881 North Cambridge Court, Highland, Utah 84003.

2. On information and belief, Nike is a corporation organized and existing under the laws of Oregon, has a principal place of business at One Bowerman Drive, Beaverton, Oregon 97005, has designated its registered agent for purposes of service of process as James C. Carter, One Bowerman Drive, Beaverton, Oregon 97005, and is doing business in this judicial district.

3. On information and belief, Apple is a corporation organized and existing under the laws of California, has a principal place of business at One Infinite Loop, Cupertino, California 95014, has designated its registered agent for purposes of service of process as C T Corporation System, 818 West Seventh Street, Los Angeles, California 90017, and is doing business in this judicial district.

SUMMARY OF THE CASE

4. Greg and Kenny Anderson are brothers and native Utahns who have been involved in athletics all their lives. The Andersons invented unique footwear to measure one or more locomotive performance parameters of a person, such as a user's walking or running speed and/or distance traveled by the user. The Andersons filed for a patent on their invention in 1995, and were awarded

U.S. Patent No. 5,720,200 ("the '200 patent") in 1998. Leaper is the Andersons' company and owner of the '200 patent.

5. In 2000, Leaper's counsel sent a letter to Nike enclosing a copy of the '200 patent. In the letter, Leaper suggested that Nike incorporate the Anderson's invention into Nike's shoes and take a license under the '200 patent. Nike wrote back two weeks later and said: "NIKE has no interest in pursuing this disclosure."

6. Six years later, in May 2006, acting on Leaper's suggestion but without contacting or seeking permission from Leaper to use the patent, Nike and Apple jointly announced their partnership to launch Leaper's invention through the "Nike + iPod Sport Kit".

7. The "Nike + iPod Sport Kit" is a wireless system jointly developed and marketed by Nike and Apple that allows Nike + footwear to communicate with an iPod Nano music player. The kit includes a sensor that fits into a pocket in the inner sole of Nike + footwear, and a receiver that plugs into the bottom of an iPod Nano music player. With the Nike + footwear connected to the iPod Nano music player through the "Nike + iPod Sport Kit", information about time, distance, calories burned and pace is displayed on the iPod screen and audio feedback is announced to the user through the iPod's ear bud headphones. This Nike + iPod system jointly formed by Nike and Apple embodies Leaper's patented invention.

8. Nike and Apple have achieved huge success through the use of Leaper's patent. In Nike's F2Q07 Earnings Call on December 20, 2006, Mark Parker, Nike's CEO, stated: "Nike Plus is turning out to be huge. In less than six months Nike Plus users have logged more than 3 million miles and there are over 3 million Plus-ready shoes in the global marketplace; we expect that number to

double by the year end. Clearly our confidence in this concept has proven to be accurate."

9. It is believed that Nike and Apple have generated hundreds of millions of dollars in infringing sales of iPod Nanos, Nike + shoes, and Nike + iPod Sport Kits, easily exposing them to liability in the tens of millions of dollars for their infringement of Leaper's patent. It is further believed that Nike and Apple's infringement has spawned additional revenues through sales of products related to the Nike + iPod system, such as the Nike Amp + bracelet, for example.

JURISDICTION AND VENUE

10. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code. Subject-matter jurisdiction over Leaper's claims is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

11. On information and belief, each defendant has transacted business, contracted to supply goods or services, and caused injury to Leaper within Utah, and has otherwise purposefully availed itself of the privileges and benefits of the laws of Utah, and is therefore subject to jurisdiction of this Court pursuant to Fed. R. Civ. P. 4(k)(1)(A) and § 78-27-24, Utah Code Ann.

12. On information and belief, each defendant has placed its allegedly infringing products into the stream of commerce throughout the United States with the expectation that they will be used by consumers in this judicial district, which products and services have been offered for sale, sold and used in this judicial district.

13. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

PATENT INFRINGEMENT

14. On February 24, 1998, U.S. Patent No. 5,720,200 ("the '200 patent"), entitled "Performance Measuring Footwear," a copy of which is attached hereto as Exhibit A, was duly and legally issued. Leaper is the owner by assignment of all right, title and interest in and to the '200 patent, including the right to sue for and recover all past, present and future damages for infringement of the '200 patent.

15. Upon information and belief, each defendant, either alone or in conjunction with others, has in the past and continues to infringe, contribute to infringement, and/or induce infringement of the '200 patent by making, using, selling and/or offering to sell, and/or causing others to use, footwear and/or electronic products, which in combination infringe claim 18 of the '200 patent. Defendants are liable for infringement of claim 18 of the '200 patent pursuant to 35 U.S.C. § 271.

16. Each defendant's acts of infringement have caused damage to Leaper, and Leaper is entitled to recover from each defendant the damages sustained by Leaper as a result of each defendant's wrongful acts in an amount subject to proof at trial.

17. Leaper gave Nike actual notice of the '200 patent on or about April 26, 2000, the date on which Leaper's counsel sent Nike a letter that enclosed a copy of the '200 patent and offered Nike a license under the '200 patent.

18. Leaper's April 26, 2000 suggested that Nike incorporate the technology in the '200 patent into Nike's shoes.

19. In response to Leaper's letter, Nike sent a letter dated May 11, 2000 to Leaper's counsel. In its letter, Nike stated: "NIKE has no interest in pursuing this disclosure".

20. Other than its May 11, 2000 letter, Nike has made no further communication to Leaper concerning the ‘200 patent.

21. Despite its knowledge of the ‘200 patent, Nike never made any attempt to obtain a license under the ‘200 patent.

22. Nike never attempted to obtain permission from Leaper to practice the technology protected by the ‘200 patent.

23. Despite having told Leaper that “NIKE has no interest in pursuing this disclosure”, Nike did not tell Leaper that Nike had changed its mind and decided to pursue the disclosure of the ‘200 patent.

24. Nike never told Leaper that Nike was working with Apple to develop and market the Nike + iPod Sport Kit.

25. Nike was aware of the ‘200 patent when Nike was developing the Nike + iPod Sport Kit with Apple.

26. Nike knew about the ‘200 patent at the time the Nike + iPod Sport Kit was first announced to the public.

27. Upon information and belief, the infringement of the ‘200 patent by Nike has been and continues to be willful and deliberate.

28. As a consequence of the infringement complained of herein, Leaper has been irreparably damaged to an extent not yet determined and will continue to be irreparably damaged by such acts in the future unless each defendant is enjoined by this Court from committing further acts of infringement.

PRAYER FOR RELIEF

WHEREFORE, Leaper prays for entry of judgment that:

A. Each defendant has infringed the '200 patent;

B. Each defendant account for and pay to Leaper all damages caused by its individual and/or joint infringement of the'200 patent in accordance with 35 U.S.C. § 284;

C. The infringement of the '200 patent by Nike has been willful and deliberate, that the Court increase the amount of damages as a result of the infringement by Nike to three times the amount found or assessed by the Court because of the willful and deliberate nature of the infringement, all in accordance with 35 U.S.C. § 284;

D. Leaper be granted permanent injunctive relief pursuant to 35 U.S.C. § 283 enjoining each defendant, its officers, agents, servants, employees and those persons in active concert or participation with them from further acts of patent infringement;

E. Leaper be granted pre-judgment and post-judgment interest on the damages caused to it by reason of each defendant's patent infringement complained of herein;

F. Leaper be granted its reasonable attorneys' fees;

G. Costs be awarded to Leaper; and,

H. Leaper be granted such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Leaper demands trial by jury on all claims and issues so triable.

Respectfully submitted,

Dated: October 15, 2007

By: /s/ James B. Belshe

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